IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

WP(C).No. 69 of 2007(G)

PETITIONERS:

1. **ALL KERALA BUS OPERATORS ORGANISATION, REG.NO.642/99, 12/994, S.N.BUILDING, G.B.ROAD, PALAKKAD, REP. BY ITS GENERAL SECRETARY T.GOPINATHAN.**

2. **M.USHA MOHAN, W/O.T.N.S.MOHAN, NARAYANA MANDIRAM, EAST VILLAGE, KOLLENGODE.**

BY ADV. SRI.SAJEEV KUMAR K.GOPAL
SRI.BINOY VASUDEVAN

RESPONDENTS:

1. **INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY, REP. BY ITS CHAIRMAN, IIIRD FLOOR, PARISRAMA BHAVAN, 5-9-58/B, FATESH MAIDAN ROAD, BASHEER BAGH, HYDERABAD.**

2. **TARIFF ADVISORY COMMITTEE (GENERAL INSURANCE), REP. BY ITS CHAIRMAN, ADOOR HOUSE, 6, K.DUBASH MARGH, MUMBAI-400 023.**

3. **THE REGIONAL MANAGER, ORIENTAL INSURANCE COMPANY LTD., M.G.ROAD, THRISSUR.**

4. **THE REGIONAL MANAGER, NEW INDIA ASSURANCE CO. LTD., MUTH0OT TOWERS, M.G.ROAD, KOCHI-35.**

5. **THE REGIONAL MANAGER, NATIONAL INSURANCE CO. LTD., MUTHOOT TOWERS, M.G.ROAD, KOCHI-35.**

BY ADV. SRI.K.L.NARASIMHAN, SC TAC/IR & DA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/03/2007, ALONG WITH WPC NO. 81 OF 2007 AND CONNECTED CASES THE COURT ON 26.03.2007 DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).Nos. 69/2007-G, 81/2007-I, 232/2007-C,

783/2007-R & 801/2007-U

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Dated this the 26th day of March, 2007.

JUDGMENT

These writ petitions are by different organisations of operators of public carriages. They challenge the enhancement of the premium payable for third party insurance.

2. The short issue arising for decision is as to whether the Tariff Advisory Committee, hereinafter referred to as the "TAC", for short, was justified in issuing the decision contained in TAC/7/06 dated 4-12-2006 whereby it decided to withdraw the tariff rates, terms, conditions and regulations for Fire, Engineering, Motor, Workmen's Compensation and other classes of business fixed by it. As a consequence of the said decision of the

TAC, the rates, terms, conditions and regulations applicable to the said classes of business were to be regulated by the Insurance Regulatory and Development Authority, hereinafter, the "IRDA" for short, with effect from 1-1-2007. Petitioners also challenge the decision of the IRDA by which the tariff was fixed by them. I may at once notice that during the pendency of these writ petitions, counter-affidavit has been placed on record producing, among other things, the decision of IRDA revising the impugned rates by slashing them.

3. The prime question arising for decision is as to whether the TAC is obliged to formulate the tariff rates to govern the aforesaid insurance policies and as to whether the IRDA has the power to fix the rates.

4. The TAC is constituted under Section 64(1) of the Insurance Act, 1938. Part IIB of the Insurance Act, consisting of sections 64U to 64UM relates to Tariff Advisory Committee and Control of Tariff Rates. Section 64UC provides the power of the Advisory Committee to regulate rate, advantage etc. It provides, among other things, that the TAC may, from time to

time and to the extent it deems expedient, control and regulate the rates that may be offered by insurers in respect of any risk or of any class or category of risks, the rates etc. of which, in its opinion, it is proper to control and regulate. Such rates etc. shall be binding on the insurers. Sub-section (3) of Section 64UC provides that every decision of the TAC shall be valid only after and to the extent it is ratified by the Authority, thereby meaning the IRDA, and every such decision shall take effect from the date on which it is so ratified by the IRDA and if the IRDA so orders in any case, from such earlier date as may be so ordered. In the instant case, as already noticed, the TAC has decided to withdraw the tariff rates fixed by it. So much so, on and after the issuance of the decision dated 4-12-2006, there is no TAC decision fixing the tariff in terms of Section 64UC of the Insurance Act.

5. Coming to the provisions of the Insurance Regulatory and Development Authority Act, 1999, it can be seen that Section 14(2)(i) of that Act provides that without prejudice to the generality of the provisions contained in sub-section (1) of Section 14, the powers and functions of the IRDA

shall include control and regulation of the rates that may be offered by insurers in respect of general insurance business not so controlled and regulated by the TAC under Section 64U of the Insurance Act. So much so, the TAC having withdrawn the rates fixed by it, it was well within the competence of the IRDA to control and regulate the rates that may be offered by insurers in respect of general insurance business regarding the fields of insurance in question. Both the enactments under consideration are Central legislations, for the purpose of regulating and controlling the field of insurance and make reference to each other. So much so, the TAC was well within its authority to take its decision that it was not expedient to continue to have the tariff rates fixed by it and therefore, to withdraw the same. Once that was done, the field occupied by the rates fixed by the TAC under Section 64UC of the Insurance Act fell vacant and therefore, the IRDA was well within authority referable to Section 14(2)(i) to control and regulate the rates of those fields of insurance. Hence, there is neither any jurisdictional error nor lack of competence for the IRDA to have taken the decision to revise the insurance tariffs. Therefore, there is no legal infirmity or jurisdictional error in

the decision-making process by which the IRDA has fixed the tariffs for areas not covered by any TAC decision.

6. In the decision of the Apex Court in **Joint Council Bus Syndicate & others v. Union of India (AIR 1992 SC 1616)**, having regard to the entire facts situation then prevailing, it was directed that those commuters which would be affected by upward revision of the insurance tariffs are entitled to at least a post-decisional hearing and the TAC was directed to afford such hearing. That decision was rendered when deciding a case of challenge to a TAC decision, on fixation of tariffs. Having regard to the ratio of the said decision, I have no doubt in my mind that the principles laid down by Their Lordships apply in equal force when the IRDA decides on the question of tariff. As already noticed, when the initial complaint of the petitioners was that there is a 100% upward revision of tariff rates, the respondents are on record with the uncontroverted statement that the said decision on the tariff rates was again reconsidered and the rates have been slashed down whereby, as of now, the rates would be only 18% above the rates which prevailed earlier. Going by the

counter-affidavit, it is also explicitly clear that the IRDA had extended opportunity of hearing and had, in fact, heard different organisations of persons involved in the different sectors who would have to pay higher insurance premium on the basis of the upward revision of the tariff rates. On facts, it is a case where IRDA has clearly demonstrated relying on its counter-affidavit that the tariff fixed, as of now, has been done after due application of mind and after affording sufficient opportunity of hearing. I also find in support of the said findings of facts, in the order dated 12-1-2007 in M.P.(MD). Nos.2 and 3 of 2006 in W.P.(MD).No.11699/2006 of the Madurai Bench of the Madras High Court, considering the very same situation. I also find that there is no jurisdictional error or lack of authority for the IRDA to have rendered the policy decision which it has. Having regard to the well settled parameters of law relating to judicial review of policy decisions, I do not find any ground to sustain the challenge, even on facts, particularly when it has been demonstrated that IRDA had adverted to and considered all relevant materials and had afforded an opportunity of hearing.

7. Having found as above and having repelled the contentions, also on facts, the contention that the field in question relates to compulsory insurance does not appeal. Section 143 of the Motor Vehicles Act, 1988 makes third party insurance cover obligatory for the use of a motor vehicle. Such obligation is part of the social obligations recognised and imposed on the users of motor vehicles by law, in terms of the Constitution. At the same time, institutions like IRDA, TAC etc. are created by law to ensure that checks and balances are maintained in the field of insurance business. The compulsion on a person by Section 143 of the Motor Vehicles Act to have a third party insurance cover for a motor vehicle does not give him any added advantage to stand against any decision of the IRDA on the question of tariff rates in relation to motor vehicle policies, unless the impugned imposition is per se arbitrary, irrational and made contrary to due procedure. Therefore, the socialistic goal sought to be achieved by Section 143 of the Motor Vehicles Act is no plea against the rates, when they are not demonstrated to be arbitrary.

For the reasons aforesaid, these writ petitions fail. The

same are accordingly dismissed. No costs.

Sd/-

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

-true copy-

P.S.to Judge.